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U.S. Citizenship
and Immigration
Services

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H4

FILE:

Office: HELENA, MONTANA

Date:

JUN 25 2006

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Helena, Montana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her Lawful Permanent Resident (LPR) spouse. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to remain in the United States and reside with her LPR spouse and children.

The District Director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director's Decision* dated October 28, 2002.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

.....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record indicates that the applicant entered the United States without inspection in June 1992. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on April 27, 1999, based on an approved Petition for Alien Resident. The record further reflects that an Authorization for Parole of an Alien into the United States (Form I-512) was issued to the applicant on November 23, 1999. The applicant departed the United States on an unknown date after the issuance of the Form I-512 and after a visit to Mexico she was paroled into the United States on February 5, 2000. It was this departure that triggered her unlawful presence.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security (Secretary)] as a period of stay for purposes of determining

bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 27, 1999, the date of her proper filing of the Form I-485. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

On appeal the applicant states when her spouse filed the Form I-130 and when she filed for advance parole nobody informed her that if she left the country she may be found inadmissible under section 212(a)(9)(B)(i) of the Act when she return to the United States to resume the processing of her application for adjustment of status.

The regulation at 8 C.F.R. § 103.3(a)(1) states in pertinent part:

(v) Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

In the present case the applicant has failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Accordingly, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.